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Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HINKLE CONTRACTING COMPANY LLC – EWING STONE**

Registration No. 10193

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, and - 1316, between the State Air Pollution Control Board and Hinkle Contracting Company, LLC - Ewing Stone, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. “Facility” means the Hinkle Contracting Company, LLC - Ewing Stone facility, located at 184 Dusty Lane, Ewing, Lee County, Virginia, which operates as a stone quarrying and processing facility.

5. “Hinkle Contracting Company, LLC - Ewing Stone” means Hinkle Contracting Company, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Hinkle Contracting Company, LLC - Ewing Stone is a ‘person’ within the meaning of Va. Code § 10.1-1300.
6. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
8. “PCE” means partial compliance evaluation by DEQ staff.
9. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 chapters 10 through 80.
10. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
11. “Va. Code” means the Code of Virginia (1950), as amended.
12. “VAC” means the Virginia Administrative Code.
13. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Hinkle Contracting Company, LLC - Ewing Stone owns and operates the Facility in Lee County, Virginia. The Facility is a stone quarrying and processing facility.
2. On April 4, 2019, DEQ staff conducted a PCE of the Facility. During the PCE, DEQ staff noted an impact crusher had replaced the permitted cone crusher and three additional conveyor belts and a stockpile had been installed and operated. On April 11, 2019, DEQ received a permit application from the Facility.
3. 9 VAC 5-80-1120 (A) states, “No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.”
4. 9 VAC 5-50-30 states. “Performance tests for new or modified sources shall be conducted and reported and data shall be reduced as set forth in this chapter...Performance testing for new or modified sources shall be subject to

testing guidelines approved by the board...”

6. On May 3, 2018, based on the April 4, 2019 PCE, the Department issued a Notice of Violation No. ASWRO001196 to Hinkle Contracting Company, LLC - Ewing Stone for the alleged violation described in paragraph C(2) above.
7. On May 6, 2019, the Department received a telephone response to the NOV from representatives of the Facility.
8. Based on the results of the April 4, 2019 PCE and the May 6, 2019 response, the Board concludes that Hinkle Contracting Company, LLC - Ewing Stone has violated 9 VAC 5-80-1120 (A) and 9 VAC 5-50-30 as described in paragraph C(2) through C(4).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and - 1316, the Board orders Hinkle Contracting Company, LLC - Ewing Stone and Hinkle Contracting Company, LLC - Ewing Stone agrees to:

Pay a civil charge of \$6,163 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

Each payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Hinkle Contracting Company, LLC - Ewing Stone shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Hinkle Contracting Company, LLC - Ewing Stone shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hinkle Contracting Company, LLC - Ewing Stone for good cause shown by Hinkle Contracting Company, LLC - Ewing Stone, or on its own motion pursuant to the

Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified in Section C of this Order and NOV No.ASWRO001196 dated May 3, 2019. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Hinkle Contracting Company, LLC - Ewing Stone admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Hinkle Contracting Company, LLC - Ewing Stone consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hinkle Contracting Company, LLC - Ewing Stone declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Hinkle Contracting Company, LLC - Ewing Stone to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Hinkle Contracting Company, LLC - Ewing Stone shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Hinkle Contracting Company, LLC - Ewing Stone shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hinkle Contracting Company,

LLC - Ewing Stone shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

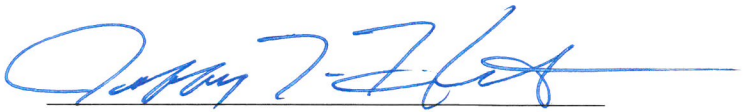
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hinkle Contracting Company, LLC - Ewing Stone. Nevertheless, Hinkle Contracting Company, LLC - Ewing Stone agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Hinkle Contracting Company, LLC - Ewing Stone has completed all of the requirements of the Order.
 - b. Hinkle Contracting Company, LLC - Ewing Stone petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Hinkle Contracting Company, LLC - Ewing Stone.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Hinkle Contracting Company, LLC - Ewing Stone from its

obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Hinkle Contracting Company, LLC - Ewing Stone and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Hinkle Contracting Company, LLC - Ewing Stone certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Hinkle Contracting Company, LLC - Ewing Stone to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hinkle Contracting Company, LLC - Ewing Stone
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Hinkle Contracting Company, LLC - Ewing Stone voluntarily agrees to the issuance of this Order.

And it is ORDERED this 1st day of July, 2019


Jeffrey L. Hurst - Regional Director
Department of Environmental Quality

Hinkle Contracting Company, LLC - Ewing Stone voluntarily agrees to the issuance of this Order.

Date: 6/20/19 By: [Signature]
Warren Hawkrige,
Senior Vice President - Operations
Hinkle Contracting Company, LLC - Ewing Stone

Commonwealth of Kentucky

City/County of Fayette

The foregoing document was signed and acknowledged before me this 28th day of June, 2019 by Warren Hawkrige who is Senior Vice President of Hinkle Contracting Company, LLC - Ewing Stone, on behalf of

the company.

[Signature: Heather Carpenter]
Notary Public

613521
Registration No.

My commission expires: 1-29-2023

Notary Seal:



Heather Carpenter
NOTARY PUBLIC
State at Large, Kentucky
ID # 613521
My Commission Expires
January 29, 2023